IN THE

Supreme Court of the United States

OCTOBER TERM, 1942

No. .....

V. W. PETTY ..... *Petitioner*

v.

MISSOURI AND ARKANSAS RAILWAY COMPANY ..... *Respondent*

BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

The opinion of the Supreme Court of Arkansas has not been officially reported, but it appears in the record at page ....

The date of the decree to be reviewed is February 1, 1943, and the date of the order denying a petition for rehearing is March 15, 1943.

The jurisdiction of this Court is invoked under the Act of Congress of February 13, 1925, Chapter 229, 43 Statutes 936, Section 237B of the Judicial Code, 28 U.S.C.A. Section 344(b) relating to the issuance of writs of certiorari to bring up for review judgments of state courts of last resort.

A concise statement of the case appears in the preceding petition, which is hereby adopted and made a part of this brief.

POINTS AND AUTHORITIES RELIED ON

I

It was the duty of the Supreme Court of Arkansas to apply existing federal law in adjudicating the rights of the parties under an agreement concerning rules, rates of pay and working conditions entered into by the railroad and its employees in accordance with the Railway Labor Act.

Claflin v. *Houseman,* 93 U.S. 130, 23 L. Ed. 833;

Ex parte Worcester County National Bank, 279 U.S. 347, 49 S. Ct. 368;

United States v. *Bank of New York and Trust Co.,* 296 U.S. 463, 56 S. Ct. 343, 80 L. Ed. 331;

Hines v. *Lowery,* 305 U.S. 85, 59 S. Ct. 31;
Ex parte Bransford, 310 U. S. 354, 60 S. Ct. 947.

II

It was the duty of the Supreme Court of Arkansas to construe the employment contract so as to give full effect to the ultimate aim and purpose of the Railway Labor Act.

Bird v. *United States,* 187 U. S. 118, 47 L. Ed. 100;

Takao Ozawa v. *United States,* 260 U.S. 178, 43 S. Ct. 65;

Gulf States Steel Co. v. *United States,* 287 U.S. 32, 53 S. Ct. 69;

United States v. *Powers,* 307 U.S. 214, 59 S. Ct. 805;

United States v. *American Trucking Associations,* 310 U. S. 534, 60 S. Ct. 1059.

III

In applying the rule that the parties to a contract are conclusively presumed to have contracted with reference to the laws in existence at the time when, and at the place where, the contract is made and to be performed, the applicable federal laws must be taken into account and, where the federal law and state law are in conflict, the latter must yield to the former, as being the supreme law of the land.

Ex parte Bransford, 310 U.S. 354, 60 S. Ct. 947;

Hines v. *Davidowitz*, 312 U.S. 52, 61 S. Ct. 399;

IV

It was the purpose of Congress, in enacting the Railway Labor Act, to provide a means for the orderly settlement of labor disputes and avoiding industrial strife.

Virginian Ry. Co. v. *System Federation No.* 40, 300 U.S. 515, 57 S. Ct. 592.

V

The stipulation against discharge without a hearing amounted to the expression, in contractual form, of the mandatory provisions of the Railway Labor Act, and is therefore valid and enforceable.

Railway Labor Act, 45 U.S.C., Chapter 8, Section 152;

State of Indiana ex rel Anderson v. *Brand*, 303 U.S. 95, 58 S. Ct. 443.

VI

Stipulations against wrongful discharge, or without a hearing, in employment agreements made pursuant to the Railway Labor Act, have been construed by the federal courts to be valid and enforceable, and the State courts are therefore bound to adopt such construction in order to secure uniformity in the application of a federal statute.

Yazoo & M. V. R. Co. v. *Webb,* 64 F. (2d) 902;

Moore v. *Illinois Central R. Co.,* 24 F. Supp. 731;

Illinois Central R. Co. v. *Moore,* 112 F. (2d) 959;

Moore v. *Illinois Central R. Co.,* 312 U.S. 630, 61 S. Ct. 754;

Seaboard Air Line Railway Co. v. *Horton,* 233 U.S. 492, 58 L. Ed. 1062;

Chesapeake & O. Ry. Co. v. *Kuhn,* 284 U. S. 44, 52 S. Ct. 45.

ARGUMENT

I

It was the duty of the Supreme Court of Arkansas to apply existing federal law in adjudicating the rights of the parties under an agreement concerning rules, rates of pay and working conditions entered into by the railroad and its employees in accordance with the Railway Labor Act.

In taking up and deciding the question of petitioner's rights under the Railway Labor Act, the Supreme Court of Arkansas, in its opinion in this case, said:

> "Instead of presenting his claim to that tribunal (the National Railway Adjustment Board), he elected to bring his action in this state, where the decision of this court in the Matthews case prevented his recovery."

The *Matthews* case referred to (*St. Louis, I. M. & S. Ry. Co.* v. *Matthews*, 64 Ark 398) was decided by the Supreme Court of Arkansas in 1897; nearly thirty years before Congress enacted the Railway Labor Act. It was there held that a stipulation against discharge without just cause, or without a hearing, was unilateral and unenforceable.

On August 1, 1935, the effective date of the contract sued on by petitioner herein, the Railway Labor Act was in full force, and had been in full force for nearly a decade. It was still in force on February 1, 1943, the date the opinion of the Supreme Court of Arkansas was rendered in this case, and was still in full force on March 15, 1943, the

date on which that court denied petitioner's petition for rehearing.

While conceding that petitioner had his remedy under the Railway Labor Act, the Supreme Court of Arkansas nevertheless misconstrued the scope of that remedy, and of the Act, in holding that petitioner's election to sue in the State courts precluded him from invoking a substantial right accorded him by a federal law, and that he was bound, instead, by the State rule as announced in the *Matthews* case. Such holding is clearly at variance and in conflict with the long established and well settled principle, as declared by this Court, that it is obligatory upon the state courts to apply federal laws in all cases applicable.

> "Upon the state courts, equally with the courts of the Union, rests the obligation to guard and enforce every right secured by the Constitution and laws of the United States whenever those rights are involved in any suit or proceedings before them."
>
> *United States* v. *Bank of New York & Trust Co.*, 296 U. S. 463, 56 S. Ct. 343, 80 L. Ed. 331.

> "The laws of the United States are laws in the several States, and just as much binding on the citizens and courts thereof as the State laws are."
>
> *Claflin* v. *Houseman*, 93 U.S. 130, 23 L. Ed. 833.

> "Congressional enactments in pursuance of Constitutional authority are the supreme law of the land."
>
> *Hines* v. *Lowrey*, 305 U.S. 85, 59 S. Ct. 31.

Also see:

> *Ex parte Worcester County National Bank*, 279 U.S. 347, 49 S. Ct. 368;
>
> *Ex parte Bransford*, 310 U.S. 354, 60 S. Ct. 947.

II

It was the duty of the Supreme Court of Arkansas to construe the employment contract so as to give full effect to the ultimate aim and purpose of the Railway Labor Act.

> "In the interpretation of statutes, the function of the courts is easily stated. It is to construe the language so as to give effect to the intent of Congress."
>
> *United States* v. *American Trucking Associations*, 310 U.S. 534, 60 S. Ct. 1059.

The effectiveness of the Railway Labor Act depends ultimately upon the enforceability of the employment agreements concerning rules, rates of pay and working conditions, made in accordance with the provisions of the Act; and to deny validity to such agreements on the ground that stipulations against wrongful discharge, embodied in the agreements, renders them unilateral and unenforceable, is to do violence to the very spirit and purpose of the Act. And the employment agreements which result from the collective bargaining authorized and commanded by the Act are, in the final analysis, the goal toward which the entire Act is directed. The collective bargaining, required by the Act is but an intermediate step toward that end. Surely, it is not to be presumed that Congress intended the Railway Labor Act to be a promising highway leading to nothing more substantial than a mirage.

> "There is a presumption against a construction which would render a statute ineffective or inefficient, or which would cause grave public injury or even inconvenience."
>
> *United States* v. *Powers*, 307 U.S. 214, 59 S. Ct. 805;
>
> *Bird* v. *United States*, 187 U.S. 118, 47 L. Ed. 100.

"When possible, every statute should be rationally interpreted with the view of carrying out the legislative intent."

Gulf States Steel Co. v. *United States*, 287 U.S. 32, 53 S. Ct. 69.

"It is the duty of this Court to give effect to the intent of Congress. Primarily, this intent is ascertained by giving the words their natural significance, but if this leads to an unreasonable result plainly at variance with the policy of the legislation as a whole, we must examine the matter further. We may then look to the reason of the enactment and inquire into its antecedent history and give it effect in accordance with its design and purpose, sacrificing, if necessary, the literal meaning in order that the purpose may not fail."

Takao Ozawa v. *United States*, 260 U.S. 178, 43 S. Ct. 65.

III

In applying the rule that the parties to a contract are conclusively presumed to have contracted with reference to the laws in existence at the time when, and at the place where, the contract is made and to be performed, the applicable federal laws must be taken into account and, where the federal law and state law are in conflict, the latter must yield to the former, as being the supreme law of the land.

The Railway Labor Act is in effect in all forty-eight of the States. It is as much a part of Arkansas law as it is a part of the laws of California or New York. As such, it becomes a part of every contract of employment resulting from collective bargaining under the Act, regardless of where the contract is made or to be performed. Further-

more, where the State law is in conflict with the provisions of the Act, the Act must prevail.

> "The nature of the power exerted by Congress, the object sought to be attained, and the character of the obligations imposed by the law, are all important in considering the question of whether supreme federal enactments preclude enforcement of State laws on the same subject."
>
> *Hines* v. *Davidowitz*, 312 U.S. 52, 61 S. Ct. 399.

> "The declaration of the supremacy clause gives superiority to valid federal acts over conflicting state statutes."
>
> *Ex parte Bransford*, 310 U.S. 354, 60 S. Ct. 947.

IV

It was the purpose of Congress, in enacting the Railway Labor Act, to provide a means for the orderly settlement of labor disputes and avoiding industrial strife.

> "Its (the Railway Labor Act) major objective is the avoidance of industrial strife."
>
> *Virginian. Ry. Co.* v. *System Federation No.* 40, 300 U.S. 515, 57 S. Ct. 592.

V

The stipulation against discharge without a hearing amounted to the expression, in contractual form, of the mandatory provisions of the Railway Labor Act, and is therefore valid and enforceable.

Subdivision 1, 45 U.S.C., Chapter 8, Section 152, reads as follows:

> "It shall be the duty of all carriers, their officers, agents and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof."

Section (d) of Article 32 of the agreement sued on by petitioner reads as follows:

> "Enginemen shall not be discharged suspended or demerits placed against their records until they have had a fair and impartial hearing before an officer of the Company. At such hearing they may be represented by an employee of their own choice or by the regularly constituted committee of their organization. The representative of the man involved in the hearing shall have the right to introduce witnesses and interrogate any witness giving testimony at the investigation. If found not guilty he shall be returned to the service and paid for time lost."

This stipulation is clearly in line with the provision of the Act quoted above and also with the provision of Subdivision 2 of the same section of the Act which reads:

> "All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute."

In other words, the statutory requirements have been incorporated into the agreement; the Act has become part of the contract by express terms. The stipulation is there-

fore valid and enforceable. The Act not only makes it the duty of the carrier to *make* agreements concerning rates of pay, rules and working conditions, but also to *maintain* such agreements. In this connection, the only reasonable and logical construction to be placed on the word "maintain" is that the carrier shall "adhere to", "support", "uphold", and consider itself bound by, the agreement in all its terms. Any construction to the contrary would vitiate the entire contract.

In the case of *State of Indiana ex rel Anderson* v. *Brand*, 303 U.S. 95, 58 S. Ct. 443, this Court had before it the question of the validity of an indefinite term teacher's employment contract, authorized by Indiana statute. The federal question before the Court in that case was whether not a subsequent repealing act, which repealed the act authorizing such indefinite term contracts, was in violation of the Constitutional prohibition against legislation impairing the obligation of contracts. The Court, in its opinion, stated that, as in most cases involving the impairment clause, it was primarily necessary to determine whether or not there was a valid contract. The Court thereupon found that the indefinite term contract, as authorized by the Indiana Legislature, was valid.

A fortiori, a contract authorized by federal law, and containing provisions directly in line with the requirements of the federal law, must necessarily, if the law itself is constitutional, be valid as to such provision; and its validity extends throughout the forty-eight States alike, state law to the contrary, notwithstanding.

VI

Stipulations against wrongful discharge, or without a hearing, in employment agreements made pursuant to the Railway Labor Act, have been construed by the federal courts to be valid and enforceable, and the State courts are therefore bound to adopt such construction in order to secure uniformity in the application of a federal statute.

The question of the validity of stipulations against wrongful discharge has been before the federal courts on at least two occasions and, in each instance, their validity upheld. And both of the cases referred to were decided prior to the decision in petitioner's case. In the first of these cases, decided by the Circuit Court of Appeals, Fifth Circuit (Miss.) it was said of such agreement:

> "But the employment though indefinite as to time is a relationship while it lasts, and is subject to the conditions fixed in the working agreement for the industry. Thus a worker cannot be discharged for causes prohibited by the agreement or without a hearing if that is provided . . ."

Yazoo & M. V. R. Co. v. *Webb*, 64 F. (2d) 902.

In the second of the two cases, the United States District Court (Mississippi) in construing such stipulations against wrongful discharge, held the contract to be valid.

Moore v. *Illinois Cent. R. Co.*, 24 F. Supp. 731.

Upon appeal of that same case to the Circuit Court of Appeals, Fifth Circuit, it was there held that such stipulation was valid and enforceable. In this connection, the court said:

"The provision in the collective agreement for a hearing before the carrier's officers, with appeal to the highest, is in line with the requirements of the statute . . . .

"We find in these provisions a clear implication that discharge is not to be at the employer's will, but only for a just cause."

Illinois Central R. Co. v. *Moore*, 112 F. (2d) 959.

The Circuit Court of Appeals held, however, that the cause of action was barred by the statute of limitations and, on that ground alone, reversed the judgment of the District Court.

The case was then brought to this Court on certiorari. And, once again, the sole question upon which the decision rested was the question of limitations. This Court held that the Circuit Court of Appeals erred in refusing to consider itself bound by the Mississippi court's interpretation of its own statute of limitations. For that reason, the judgment of the Circuit Court of Appeals was reversed *and the judgment of the District Court affirmed.*

Moore v. *Illinois Cent. R. Co.*, 312 U.S. 630, 61 S. Ct. 754.

If, then, there is to be uniformity in the application of federal law, it must follow that the interpretation, by the federal courts sitting in one State, of the substantive rights accorded by an Act of Congress, should be controlling upon all state courts when the same question, arising under the same Act, is before them for consideration. Any rule to the contrary could only lead to endless confusion in the interpretation and application of federal law, and the rights of the parties would depend entirely

upon local law. Thus, if petitioner could have brought his suit in Mississippi, the rule as announced in the *Webb* and *Moore* cases, *supra*, would have resulted in a judgment in his favor. But, being precluded from suing in Mississippi for jurisdictional reasons petitioner was obliged to maintain his action in Arkansas, with the result that the same federal right is denied him.

> "And where Congress enacts a law within the limits of its power, that law should be enforced uniformly throughout the entire United States."
>
> *Seaboard Air Line Railway* v. *Horton*, 233 U.S. 492, 58 L. Ed. 1062.

> "Moreover, in proceedings under that act (Federal Employers' Liability Act), wherever brought, the rights and obligations of the parties depend upon it and applicable principles of common law as interpreted and applied in the federal courts."
>
> *Chesapeake & O. Ry. Co.* v. *Kuhn*, 284 U. S. 44, 52 S. Ct. 45.

CONCLUSION

The judgment of the Supreme Court of Arkansas draws into question the rights and obligations created by an Act of Congress conceded to be valid; denies those rights and obligations; and is probably not in accord with the applicable decisions of this Court. It is respectfully submitted that the judgment of the Supreme Court of Arkansas should be reversed, and the cause should be remanded to that court with directions to enter a judgment reversing the judgment of the Circuit Court of Woodruff County, Arkansas, and remanding the cause to said court with directions to overrule the demurrer of respondent to petitioners's complaint, and for further proceedings not inconsistent with this Court's opinion herein.

Respectfully submitted,

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